

**RECORDING REQUESTED BY:**

Union Pacific Railroad Company  
Assistant Vice President Real Estate  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179

**WHEN RECORDED, MAIL TO:**

ADDRESS ABOVE, and, State of California

Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento California 95826  
Attention: James L. Tjosvold, P.E., Chief  
Northern California – Central  
Cleanup Operations Branch

Doc #: 2007-217435  
12/31/07 9:19 AM  
Page: 1 of 16 Fee: \$52.00  
Gary W. Freeman  
San Joaquin County Recorders  
Paid By: SHOWN ON DOCUMENT



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**COVENANT TO RESTRICT USE OF PROPERTY**

**ENVIRONMENTAL RESTRICTION**

(RE: San Joaquin County, Assessor's Parcel Number 145-200-10)

DTSC Site Code 100108

This Covenant and Agreement ("Covenant") is made by and between the Union Pacific Railroad Company, (the "Covenantor"), the current owner of property situated in Stockton, County of San Joaquin, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health, safety, or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471 and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the

provisions of this Covenant also be for the benefit of, and be enforceable by, the United States Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

## **ARTICLE I**

### **STATEMENT OF FACTS**

1.01. The Property. The Property, totaling approximately 8.25 -acres, is more particularly described in Exhibit "A" (Legal Description) and illustrated in Exhibit "B" (Plat), attached hereto and incorporated herein by this reference. The Property is located in an industrial area near the Port of Stockton and is located within the M<sup>c</sup>Cormick and Baxter Superfund Site. The Property is bounded on the North by the M<sup>c</sup>Cormick and Baxter owned property and Old Mormon Slough, on the East and South by Washington Street and on the West by the M<sup>c</sup>Cormick and Baxter Company property. The Property is also generally described as a portion of San Joaquin County Assessor's Parcel Number (APN) 145-200-10.

1.02. Hazardous Substances. Hazardous substances, as defined in section 25316, Chapter 6.8, Division 20 of the California Health and Safety Code, Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. section 9601(14); and 40 Code of Federal Regulations parts 261.3 and 302.4 (1997), remain on portions of the Property. Groundwater beneath the Property is contaminated with pentachlorophenol, dioxin, polycyclic aromatic hydrocarbons, arsenic, and chromium. In addition, non-aqueous phase liquids, attributable to creosote and petroleum oils are widespread beneath the site. Sediment in Old Mormon Slough adjacent to the site is also contaminated, primarily with polycyclic aromatic hydrocarbons and dioxin.

1.03. Remediation of the Property. The Property remediation is in accordance with the terms and requirements of the Consent Decree for civil case number 2:06-cv-2841-FCD-KJM entered into between U.S. EPA, the Department and the Covenantor. These actions are a part of the overall remediation of the M<sup>c</sup>Cormick and Baxter Superfund Site. The M<sup>c</sup>Cormick and Baxter Superfund Site remediation is pursuant to the Record of Decision (ROD) for the site issued by the U.S. EPA, dated March 31, 1999. Under the ROD, the U.S. EPA Region IX Superfund Division Director selected remedial actions for the property pursuant to CERCLA. The Department concurred with this remedy.

1.04. Land Use Covenant. The ROD provides for a land use covenant limiting the future use of the Property to industrial/commercial uses only. A land use covenant is necessary to preclude potential residential user's exposure to hazardous substances which will remain at the Property once soil remediation is complete, to preclude disruption of the response actions and to limit potential exposure to hazardous substances identified in groundwater beneath the Property. U.S. EPA, with the concurrence of the Department, has concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment.

## **ARTICLE II**

### **DEFINITIONS**

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, which at any time hold title or an ownership interest to all or any portion of the Property.

2.04. Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA or a state agency acting pursuant to a contract or cooperative agreement executed under CERCLA section 104(d)(1), 42 U.S.C. 9604(d)(1), or designated pursuant to a CERCLA Memorandum of Agreement entered into under subpart F of the NCP (40 C.F.R. 300.505) may be designated CERCLA Lead Agency.

2.06. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.07. Improvements. "Improvements" include, but are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.08. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.09. Remedial Systems. "Remedial Systems" shall mean the remedial equipment and systems located on the Property, including devices that may be installed in the future, groundwater monitoring wells, groundwater extraction wells and associated infrastructure such as piping.

### **ARTICLE III**

#### **GENERAL PROVISIONS**

3.01. Restrictions to Run with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. This Covenant: (a) Runs with the land pursuant to Health and Safety Code section 25355.5(a) and Civil Code section 1471; (b) Inures to the benefit of and passes with each and every portion of the Property; (c) Is for the benefit of, and is enforceable by the Department, and by the U.S. EPA as a third party beneficiary; and (d) Is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department and U.S. EPA.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of the Property, or any portion thereof, the Owner, lessor, or

sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. The Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the DTSC site code 100108. The notice shall also include the APN listed in Section 1.01. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

## **ARTICLE IV**

### **RESTRICTIONS**

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) A long-term care facility for the elderly, handicapped, or infirm.
- (f) Any other purpose involving residential occupancy on a 24-hour basis.

4.02. Soil Management. Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law and will not be removed from the Property without a Soil

Management Plan approved by the CERCLA Lead Agency, such approval not to be unreasonably withheld.

4.03. Prohibited Activities. The following activities are specifically prohibited without prior written approval from the CERCLA Lead Agency:

- (a) Drilling for drinking water, oil, or gas.
- (b) Extraction of groundwater for purposes or uses other than site remediation.
- (c) Alteration of existing drainage patterns as anticipated or constructed as part of the Remedial System.
- (d) Creation of significant topographic low areas where water may pond, including accessory structures, swimming pools and spas.

For purposes of this subsection, prior written approval from the CERCLA Lead Agency shall not be unreasonably withheld, and shall not be withheld if the activities in question do not disturb or interfere with the Remedial Systems.

4.04. Non-Interference with Remedial Systems.

- (a) The Owner and Occupant shall refrain from, and shall not permit, any activity that would interfere with the operation of the Remedial Systems or other Site-wide response activities at the Property without prior written approval from the CERCLA Lead Agency, such approval not to be unreasonably withheld.
- (b) All uses and development of the Property shall preserve the integrity of the Remedial Systems or other Site-wide response activities.
- (c) Owner shall provide a copy of this Covenant to all easement holders for all or any portion of the Site.

4.05. Access for Department and the U.S. EPA. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities for the Remedial Systems on the Property consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment subject to the requirement that all such persons with access to the Property shall comply with all safety rules and requirements in place for Owner's or Occupant's own

personnel, and that such persons provide their own personal protective equipment as required by those safety rules. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or EPA's authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; or federal law. Nothing in this instrument shall limit or otherwise effect the Department's right of entry and access, or authority to take response actions, under CERCLA; the National Contingency Plan, 40 Code of Federal Regulations Part 300 (1997) and its successor provisions; Chapter 6.8, Division 20 of the California Health and Safety Code; California Civil Code, or other applicable State Law.

4.06. Access for Implementing Operation and Maintenance. The entity, person or persons responsible for implementing the operation and maintenance activities related to the Remedial Systems may have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities. Such right of entry and access shall continue until such time as the CERCLA Lead Agency determines that such activities are no longer required.

## **ARTICLE V**

### **ENFORCEMENT**

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department shall be grounds for the Department to pursue administrative, civil or criminal actions.

## **ARTICLE VI**

### **VARIANCE, TERMINATION, AND TERM**

6.01. Variance. Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and

maintenance, no variance may be granted under this paragraph without prior review and prior concurrence of the variance by U.S. EPA. Any approved variance shall be recorded in the land records by the person or entity granted the variance.

6.02. Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no variance may be granted under this paragraph without prior review and prior concurrence of the termination by U.S. EPA. The written statement of termination of the Restriction or other terms of this Covenant shall be recorded in the land records by the person or entity granted the termination.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## **ARTICLE VII**

### **MISCELLANEOUS**

7.01. No Dedication Intended. The Covenantor entered into this Covenant as part of a resolution with the Department and U.S. EPA of its alleged liabilities for the Property. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. Further, nothing in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Joaquin within ten (10) days of receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally



delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Union Pacific Railroad Company  
c/o Gary L. Honeyman  
Manager, Environmental Site Remediation  
Union Pacific Railroad  
221 Hodgeman  
Laramie, Wyoming 82072

and Robert C. Bylsma, Esq.  
Regional Environmental Counsel  
Union Pacific Railroad Company  
10031 Foothills Boulevard, Suite 200  
Roseville, California 95747-7101

To Department: James L. Tjosvold, P.E., Chief  
Northern California-Central Cleanup Operations Branch  
California Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

To U.S. EPA: U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105-3901  
Attn: McCormick & Baxter Superfund Site Project Manager

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05. Construction. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

7.06. Statutory References. All statutory references include successor provisions.

7.07. Reporting Requirements. The Owner must, promptly and within twenty (20) days of discovering a violation of this Covenant, send to the Department and U.S. EPA a report of the circumstances of this violation, if known. If the Owner caused the violation, the Owner must immediately cease activities causing that violation and make repairs as necessary.

7.08. Third Party Beneficiary. U.S. EPA's rights as a third party beneficiary shall be construed pursuant to traditional principles of contract law and under the statutory and common law of the state of California.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Union Pacific Railroad Company:

By: Tony K. Love Date: 10/18/2007  
Tony K. Love  
Assistant Vice President Real Estate  
Union Pacific Railroad Company

Department of Toxic Substances Control:

By: James L. Tjosvold Date: 10/26/07  
James L. Tjosvold, P.E., Chief  
Northern California -Central Cleanup Operations Branch  
Department of Toxic Substances Control

U.S. Environmental Protection Agency, as a Third Party Beneficiary:

By: Keith Takata Date: 12/12/07  
Keith Takata, Director  
Superfund Division, Region 9  
United States Environmental Protection Agency

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before me **Kathleen L. Kawakami**, personally appeared KEITH TAKATA personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary Signature Kathleen G. Kawakami



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento } ss.

On October 26, 2007, before me, Kathleen C. Duncan,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared James L. Fosvold,  
Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Kathleen C. Duncan  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

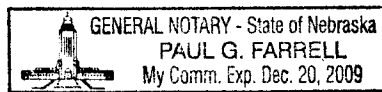
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OF SIGNER  
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## ACKNOWLEDGEMENT

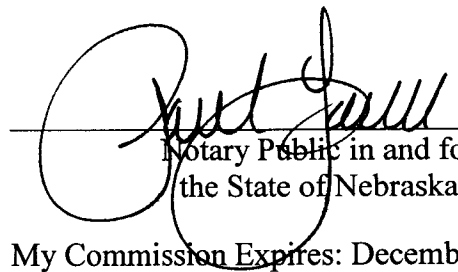
STATE OF NEBRASKA                    )  
  ) ss:  
COUNTY OF DOUGLAS                )

On this 18<sup>th</sup> day of October, 2007, before me, *Paul G. Farrell*, a Notary Public on and for said County and State, personally appeared *Tiny K. Love* to me known to be AVP- Real Estate of **UNION PACIFIC RAILROAD COMPANY** that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and that he/she was authorized to execute said instrument on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



↑(Affix Seal Here)↑

  
\_\_\_\_\_  
Notary Public in and for  
the State of Nebraska  
My Commission Expires: December 20, 2009

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**A PORTION OF SAN JOAQUIN COUNTY CALIFORNIA**  
**ASSESSOR PARCEL NUMBER 145-200-10**

All that certain property situate in the City of Stockton, County of San Joaquin, State of California, and being all of the Lands of Union Pacific Railroad Company (formerly Southern Pacific) as described in that certain deed to Southern Pacific Company filed for record on November 24, 1967 in Book 3168 of Official Records at page 475 in the Office of the Recorder, San Joaquin County, and being a portion of the Lands of Union Pacific Railroad Company (formerly Southern Pacific) as described in that certain deed to Southern Pacific Company filed for record on January 7, 1925 in Volume 57 of Official Records at page 365 in the Office of the Recorder, San Joaquin County, and being a portion of the Lands of Union Pacific Railroad Company (formerly Southern Pacific) as described in that certain deed to Southern Pacific Railroad Company filed for record on October 13, 1927 in Volume 217 of Official Records at page 13 in the Office of the Recorder, San Joaquin County, being more particularly described as follows:


BEGINNING at the most northwesterly corner of the Lands of Union Pacific Railroad Company (formerly Southern Pacific) as described in that certain deed to Southern Pacific Company filed for record on November 24, 1967 in Book 3168 of Official Records at page 475 in the Office of the Recorder, San Joaquin County; thence along the northerly line of said lands and the northerly line of the Lands of Union Pacific Railroad Company (formerly Southern Pacific) as described in that certain deed to Southern Pacific Company filed for record on January 7, 1925 in Volume 57 of Official Records at page 365 in the Office of the Recorder, San Joaquin County North 78°20'40" East, a distance of 974.58 feet to the beginning of a non-tangent curve to the right, from which point a radial line bears South 67°59'04" West; thence leaving said northerly line and along said curve having a radius of 230.00 feet, through a central angle of 68°06'11", an arc length of 273.38 feet; thence South 46°05'15" West, a distance of 69.72 feet to the beginning of a curve to the right; thence along said curve having a radius of 226.53 feet, through a central angle of 19°35'22", an arc length of 77.45 feet; thence South 65°40'37" West, a distance of 56.41 feet; thence South 00°34'59" East, a distance of 27.41 feet; thence South 52°58'49" West, a distance of 84.97 feet; thence South 20°01'38" East, a distance of 21.46 feet; thence South 68°45'01" West, a distance of 49.57 feet to the beginning of a curve to the right; thence along said curve having a radius of 413.03 feet, through a central angle of 9°28'32", an arc length of 68.31 feet; thence South 78°13'33" West, a distance of 464.45 feet; thence South 74°53'50" West, a distance of 238.59 feet; thence North 29°43'28" West, a distance of 21.20 feet; thence North 38°14'35" West, a

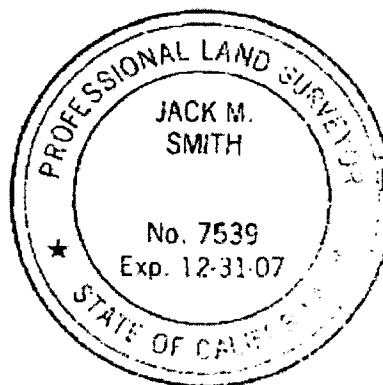
distance of 29.85 feet to a point on the southerly line of the Lands of McCormick & Baxter Creosoting Co. as described in that certain Special Warranty Deed filed for record on January 16, 1946 in the Office of the Recorder, San Joaquin County; thence along said southerly line North 78°20'42" East, a distance of 232.90 feet to the most southwesterly corner of said Lands of Union Pacific Railroad Company (formerly Southern Pacific) as described in that certain deed to Southern Pacific Company filed for record on November 24, 1967 in Book 3168 of Official Records at page 475 in the Office of the Recorder, San Joaquin County; thence along the westerly line of said lands North 11°43'18 West, a distance of 381.92 feet to the POINT OF BEGINNING and containing an area of 8.25 acres, more or less.

All bearings are based on California State Plane Coordinates, Zone 3, North American Datum of 1983.

A plat showing the above description is attached hereto and made part hereof as Exhibit "B."

This description was prepared by me or under my direct supervision.

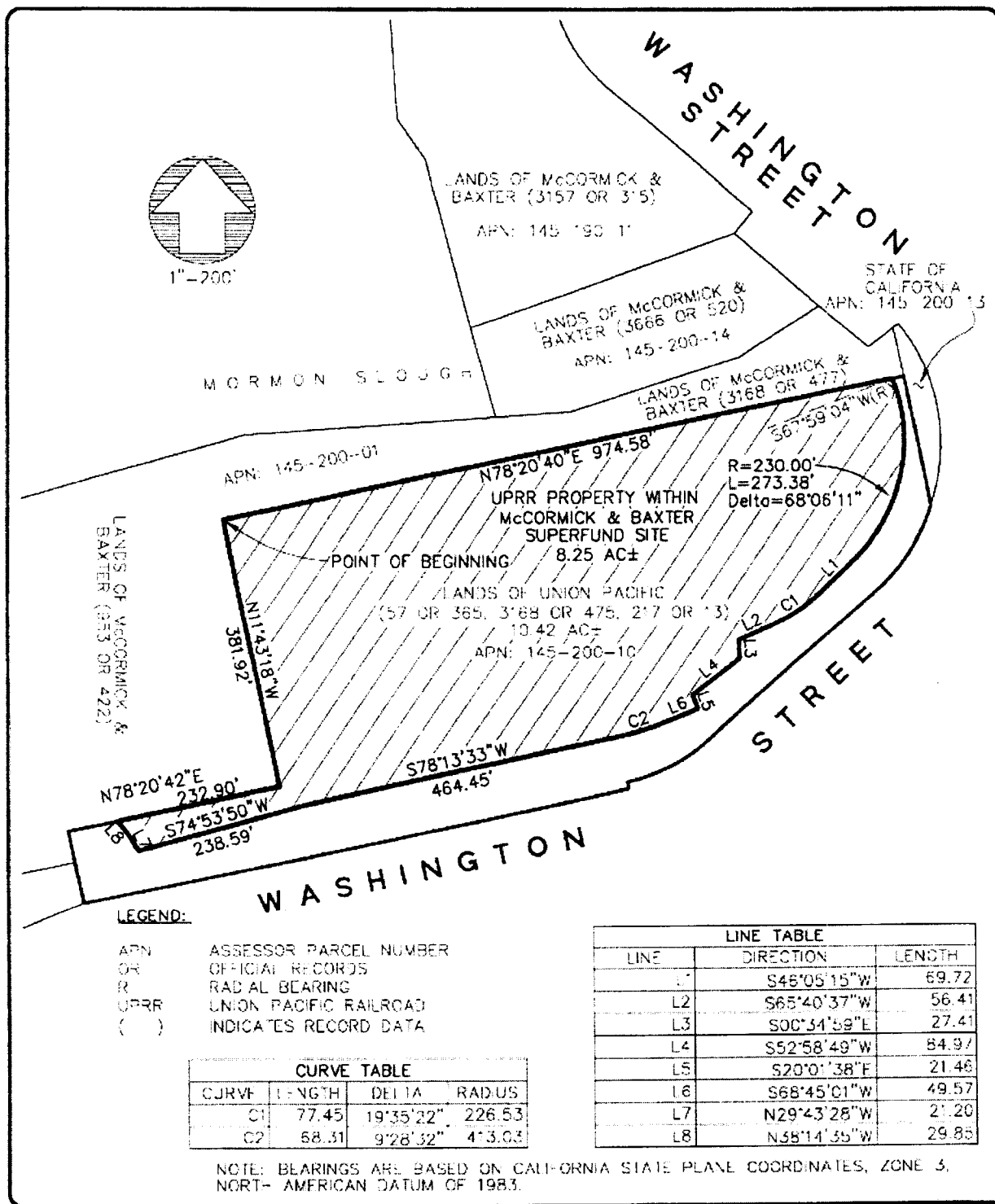
  
Jack M. Smith, P.L.S. 7539  
Expires: 12/31/07



Dated 10 OCTOBER 2007

# EXHIBIT B

## PLAT OF LAND SUBJECT TO RESTRICTION



**MUIR CONSULTING, INC.**

139 CHURCH AVE.  
 OAKDALE, CA 95361  
 (209) 845-8630 FAX (209) 845-8639  
 www.muirconsulting.com

Subject PLAT

EXHIBIT "B"

Job No. 3540-01

By JMS Date 10/10/07 Chkd. JMS

Scale 1"=200' Sheet 1 of 1